

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: September 11, 2020
TO: Honorable Board of Police Commissioners
FROM: Inspector General
SUBJECT: NON-TACTICAL UNINTENTIONAL DISCHARGE 052-19 FOR 9/22/20
CLOSED-SESSION AGENDA

Division	Date	Time	Duty-On () Off (X)	Uniform-Yes () No (X)
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Outside City	10/25/19	1:50 a.m.		
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Officer(s) Involved in Use of Force	Length of Service
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Smith, T./ PO II	2 years, 3 months
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Total Involved Officer(s)

1 x PO II

Suspect	Deceased () Wounded () Non-Hit ()
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Does not apply.	
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COP Recommendations

Tactics – Tactical Debrief, Officer Smith.

Drawing/Exhibiting – Does not apply.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Smith.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Does not apply.

Unintentional Discharge – Same as COP.

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INVESTIGATION

Annotated Force Investigation Division (FID) Incident Summary¹

Investigative Summary

On Thursday, October 24, 2019, at approximately 1600 hours, Officer Smith drove his privately-owned vehicle, a 2018, black, two door Ford pick-up truck, CA License Plate No. 72653L2, to the residence of a friend, Jose Villanueva, in the City of Canyon Country. Smith planned to assist Villanueva with evacuating his home if needed due to the active Tick Fire, which was burning in the area (Investigators' Note No. 1).

According to Officer Smith, he stayed at Villanueva's residence until approximately 2300 hours and during that time he (Smith) drank approximately nine to fourteen beers. Sometime between 2300 hours and midnight, Smith left Villanueva's residence and drove to Drifters Cocktails, located at 18240 Soledad Canyon Road. While at Drifters, Smith consumed approximately three Heineken beers and stayed at the bar until approximately 0140 hours.

Upon leaving the bar, Officer Smith drove to the 7-Eleven located at 27588 Sierra Highway. He entered the store and selected three Modelo beers, approached the counter and asked the cashier for a pack of cigarettes. At that time he provided the cashier with his Los Angeles Police Department (LAPD) Identification (ID) Card and paid with cash.

Note: According to Officer Smith, he lost his wallet approximately two weeks prior to this incident. The wallet contained his California Driver's License and LAPD ID. He completed a Lost Property Investigative Report (IR) and obtained a new police ID card. Smith stated he showed the cashier his police ID because it was the only form of identification he had. The above-mentioned Lost Property Report (DR No. 19-9935577) was filed on October 14, 2019 (Addendum No. 5).

Upon completing his purchase, Officer Smith exited the 7-Eleven store, entered his vehicle and removed his loaded Smith and Wesson, semiautomatic M&P 9mm pistol, Serial No. HWY9269, from the holster of his Sam Browne belt that had been on the rear passenger seat of his truck. He placed the pistol on the center console with the muzzle pointed toward the passenger door. Smith stated this is a common practice for him while driving at night.

¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

Note: According to Officer Smith, his pistol was loaded to capacity, eighteen rounds total. Seventeen rounds in the magazine and one round in the firing chamber.

Officer Smith drove out of the 7-Eleven parking lot and east on Soledad Canyon Road.

OIG Note No. 1: *In response to FID questioning him about his level of impairment, Officer Smith indicated that he felt he could “safely operate a motor vehicle.” As described by Officer Smith, “I did not feel that intoxicated. I felt -- I felt okay to drive, although it's probably something you shouldn't do. It is something you shouldn't do. But I -- I felt on my personal drinking experience that I was all right.”²*

He negotiated a U-turn to westbound Soledad Canyon Road and began merging to the left for a southbound turn onto Sierra Highway.

As he slowly approached Sierra Highway, he observed two sheriff deputies from the Los Angeles County Sheriff Department (LASD) sitting in a marked black and white police vehicle parked at the northeast corner of Sierra Highway and Soledad Canyon Road. The red lights on the roof of the deputies' vehicle were illuminated as it was serving as a traffic barricade, blocking northbound access to Sierra Highway due to the active fire.

Officer Smith was concerned his pistol would be seen by the deputies and that they would possibly mistake him for an unlawful firearm possessor. Therefore, he decided to move the pistol from the center console with the intent of concealing it. According to Smith, he entered the left turn lane and began to apply the brakes to slow down for the upcoming red phase tri-light. This caused the pistol to slide around on the center console. Fearing the pistol would fall to the floorboard, Smith quickly grasped for the weapon with his right hand. When he grabbed the pistol, a single round was discharged and went through the right front passenger door. This immediately shocked Smith and caused him to panic.

Smith's vehicle came to a complete stop at the limit line of the intersection. He was unsure what the trajectory of the fired round was, but he could see the deputies' vehicle was to his immediate right. He did not believe the deputies were struck by the fired round, but then observed them exiting their vehicle. He feared they might have perceived that he intentionally shot at them and would return fire. The traffic light turned green and, in a panic, Smith negotiated the left turn on to Sierra Highway and drove home.

OIG Note No. 2: *According to Los Angeles County Sheriff's Department (LASD) Deputy Gallardo, ID #550500, he and his partner, LASD Deputy Busque, ID #632970, were seated in a marked police vehicle, blocking traffic. Deputy Gallardo was in the driver's seat. During this time, he heard a “loud noise” that he immediately recognized as a “ricocheting*

² Officer Smith, Page 30, Line 19 to Page 31, Line 1.

bullet strike the pavement approximately 6 inches from the front drivers side door” of the police vehicle. Neither Deputy Gallardo nor his partner noticed Officer Smith’s truck leaving the area at that time.

LASD Acting Sergeant Lampignano was also in the area and recalled having spoken to an individual who was driving a black Ford F-150 at the nearby 7-Eleven store (the individual was later identified as Officer Smith). Shortly after speaking with the individual, Acting Sergeant Lampignano heard a gunshot shot, looked in the direction of Deputies Gallardo and Busque, and saw “the same black Ford F-150” turn south on Sierra Highway and leave “at a high rate of speed and out of view.”³

Upon arriving home, Officer Smith backed his vehicle into his garage. While doing so, the rear right side of Smith’s truck collided with the exterior garage wall causing damage. Once parked, Smith observed one bullet hole on the right front interior door panel and another sign of impact damage on the glass of the right front passenger window. Smith only recalled one shot being fired from the pistol and believed the front passenger window was up when the shot was discharged. Observing two separate bullet holes confused him as they were not consistent with his recollection of only firing one round. Smith attempted to call his father but could not reach him.

Note: Officer Smith’s father is active LAPD Sergeant I Michael Smith, Serial No. 26924. Sergeant Smith is also assigned to Foothill Area.

While in the garage, Officer Smith conducted an inspection of his pistol and counted sixteen rounds in the magazine and one round in the chamber. The seventeen rounds in the weapon were consistent with him only firing one shot. Smith secured his pistol in the holster of his Sam Browne belt and searched for the Discharged Cartridge Casing (DCC) but could not find it. He knew he mandated to notify the Department regarding the discharge, but stated he was too embarrassed to do so at the time. He entered his home with his pistol and belt and went to sleep.

Note: Immediately following the discharge, numerous LASD personnel responded to the intersection of Sierra Highway and Soledad Canyon Road. A crime scene was established and an Assault with a Deadly Weapon on a Peace Officer investigation was conducted. LASD Detective Christina Bryne, Serial No. 442442, was the Investigating Officer (IO) at scene.

During the investigation video evidence was collected from the 7-Eleven. A review of video identified Officer Smith as being inside the 7-Eleven and as a possible suspect responsible for the fired shot (LASD Uniform Report No. 019-16425-0631-055) (Addendum No. 1) (Addendum No. 2).

According to Officer Smith, he woke up at approximately 1000 hours, entered his garage and observed shards of glass on the right front passenger seat of his truck. He

³ FID Addendum No. 2.

removed the damaged right front window from the door frame and placed it on the garage floor. He then called his father and informed him of the collision with the garage wall but did not mention the incident involving the discharge of his weapon. Smith's father advised him to get the damage repaired.

At approximately 1300 hours, Officer Smith drove his truck to Rapture Auto Body, located at 26536 Ruether Avenue. He was greeted by a female employee in the office and explained he needed his truck repaired. Smith was directed to a male who he believed was the shop manager. Smith and the manager inspected the vehicle. Smith neither identified the bullet hole in the door nor discussed it with the shop manager. The manager provided Smith with a repair estimate totaling approximately six thousand dollars. As Smith had opted not to report the incident to his automobile insurance company, the manager then informed Smith that a cash deposit would be necessary (Addendum No. 7).

Note: Roy Martinez was identified as the owner and manager of Rapture Auto Body. Martinez was interviewed by Force Investigation Division (FID) on October 30, 2019. During that interview, Martinez provided investigators a copy of the estimate given to Officer Smith. Martinez stated that although he observed the bullet hole damage during the vehicle inspection, he and Smith did not discuss it.

Officer Smith parked his truck at the repair shop and took an Uber to a local Bank of America to withdraw money. While at the bank, he discovered an online Santa Clarita news article about shots being fired at deputies. Smith's panic increased upon learning that the location of the incident was the intersection of Sierra Highway and Soledad Canyon Road and that it was no doubt related to his discharging his weapon.

OIG Note No. 3: *As described by Officer Smith, "So I was like, okay, that's not what happened. I don't even know if the round left my truck honestly. So I'm like I have to call someone. Even if -- even if they would never find out who I am, they're still going to be man hunting for some guy that shot at some deputies. So I knew that I got to make a call to somebody..."*⁴

Smith completed his cash withdrawal and left the bank. Still embarrassed and in fear of the possible consequences of his actions, Smith again opted not to make any notification to the Department.

OIG Note No. 4: *According to Officer Smith, part of the reason he did not make any notification to the Department at this time was because his cell phone "was dead -- or about to die..."*⁵

⁴ Officer Smith, Page 51, Lines 19-25.

⁵ *Id.*, Page 52, Lines 6-19.

Officer Smith returned to the repair shop via Uber and gave Martinez a deposit of eleven-hundred dollars. Smith then met with his father, Sergeant Smith, at the Home Depot located at 20642 Golden Triangle Road at approximately 1430 hours. From there, Sergeant Smith drove his son to a local Enterprise Rent-A-Car Center. The younger Smith was dropped off at the Enterprise and attempted to rent a vehicle while his truck was being repaired. He was unable to do so because he did not have a driver's license in his possession. At approximately 1630 hours, Smith hired an Uber to take him home.

At approximately 1745 hours, Officer Smith called his father. During that conversation Smith informed his father of the discharge. Sergeant Smith advised him to immediately call the Foothill Area Watch Commander and report the incident.

Note: According to Sergeant Smith, he believed his son called and notified him of the discharge at approximately 1510 hours.

At approximately 1800 hours, Officer Smith telephoned Foothill Area Sergeant I Francisco Alferez, Serial No. 31625, and notified him of the discharge.

OIG Note No. 5: *According to Officer Smith, he chose to call Sergeant Alferez because he (Officer Smith) had not been at the Foothill Area for that long, and Sergeant Alferez was "just a supervisor that [he had] built trust with."⁶ Officer Smith called Sergeant Alferez's personal cell phone, but Sergeant Alferez did not immediately answer or return the call.*

According to Officer Smith's father, he and Sergeant Alferez used to be partners a long time ago. Officer Smith advised Sergeant Smith about the negligent discharge and said he had been trying to contact Sergeant Alferez to notify him, but that Sergeant Alferez was not answering his cell phone or returning the call. Sergeant Smith then called Sergeant Alferez's personal cell phone, and Sergeant Alferez immediately answered.

Sergeant Smith advised Sergeant Alferez of Officer Smith's unintentional discharge. As described by Sergeant Smith, "I call him; he answers right away and I said, 'Hey, buddy, are you working tonight?' He said, 'Yes, but I'm late; I'm not going to get in until around 9.' I said, 'Hey, Tyler is in a lot of shit. You need to call him Code 2 and let him talk to you.' He says, 'Well, what happened?' I said, 'He's going to tell you.' Again, I went from I'm not thinking like supervisor right now, thinking like a dad, I'm not going to take care of this for him."⁷

According to Sergeant Alferez, he called Officer Smith at approximately 1845 hours. In relaying what Officer Smith told him when he called,

⁶ *Id.*, Page 53, Line 2 to Page 54, Line 2.

⁷ Sergeant Smith, Page 16, Lines 8-20.

*Sergeant Alferez said, "...at approximately 02-hundred hours, he was approaching a road closure at Sierra Highway and Soledad Canyon due to the fires in Santa Clarita. The closure was being conducted by LASD. He said he had a few drinks that night and his gun was by the center console of his vehicle. He went to move his gun to secure it as he approached the closure. He said he then had an accidental discharge as his gun slid across his dashboard. [...] He panicked and left the area because he did not want the deputies to fire at him because of the discharge. He was scared and went home because he did not know what to do. When he drove to his home, he also hit his garage with his car. He saw that his car had what looked like two bullet holes; he took his car to a body shop because of the damage he had caused to his truck."*⁸

Alferez then notified Foothill Area Watch Commander Lieutenant II William Kelly, Serial No. 30052. Alferez directed Smith to stay at his residence and await further instruction (Investigators' Note No. 2).

At approximately 2005 hours, the IO investigating the shots fired incident, LASD Detective Bryne, contacted Officer Smith telephonically and informed him that deputies were outside his residence and wanted to speak with him. Smith exited his home and complied with all instructions. The on-scene deputies conducted a search of Smith's home and recovered Smith's Sam Browne belt and holstered pistol, his truck's damaged front passenger window and three 24-ounce cans of Modelo beer. LASD personnel then located Smith's Ford truck parked in the lot at Rapture Auto Body. The truck was towed and held as evidence by deputies (Addendum No. 3).

Officer Smith voluntarily accompanied the deputies to the Santa Clarita Valley LASD Detective facility located at 26340 Citrus Street. While at the facility, Detective Bryne questioned Smith regarding the incident. According to Detective Bryne, Smith waived his Miranda Rights and was cooperative and forthcoming during the interview.

On October 25, 2019, at approximately 2340 hours, while at the Detective facility, LASD Detective Deegan, Serial No. 287394 conducted a magazine count of Officer Smith's firearm. The count revealed the magazine had sixteen rounds in the magazine and one round in the firing chamber. The count was conducted in front of FID investigators and Inspector General Investigator Edward Kreins, Serial No. N4678. One digital photograph was taken of Officer Smith's firearm and ammunition by Detective Deegan (Addendum No. 6).

On November 12, 2019, Officer Smith's firearm was examined and tested for functionality by LASD Senior Criminalist Iezza, Serial No. 456828. The analysis of Smith's firearm determined it functioned as designed and the trigger pull was within manufacturer specifications (Addendum No. 4).

⁸ Sergeant Alferez, Page 5, Line 13 to Page 6, Line 8.

On February 12, 2020, LASD Detective Bryne presented her investigation to the Los Angeles County District Attorney's Office for filing consideration. As of the date of this report the District Attorney's Office has not rendered an opinion.

Investigators' Notes

1. Jose Villanueva was not interviewed, as he was not a witness to the NTUD.
2. The NTUD occurred on October 25, 2019, at approximately 0150 hours. At approximately 1800 hours, Officer Smith telephonically notified Foothill Area Sergeant I Francisco Alferez of the discharge. Personnel Complaint CF No. 19-003128 was initiated.

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CHIEF OF POLICE REPORT⁹

Chief of Police Findings

- The Chief recommended the following findings in this case:

Tactics – Tactical Debrief, Officer Smith.

Drawing/Exhibiting – Does Not Apply.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Smith.

Chief of Police Analysis

Detention

- Does not apply.

Tactics

- Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance” (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Officer Smith’s tactics were not a factor in this incident; therefore, they were not reviewed or evaluated. However, Department guidelines require personnel who are substantially involved in a Categorical Use of Force incident to attend a Tactical Debrief. The Chief determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.¹⁰

During the review of this incident, the following Debriefing Point was noted:

- Basic Firearm Safety Rules

Tactical De-Escalation

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*

⁹ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police’s report for this case.

¹⁰ A Tactical Debrief shall be conducted for all CUOF incidents within 90 calendar days of the conclusion of the BOPC review process (LAPD Department Manual, Volume 3, Section 792.15).

- **Other Resources**
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officer Smith was off-duty, and was driving his personal owned vehicle at the time of this incident. He was not engaged in any tactical operations; therefore, Officer Smith was not evaluated for Tactical De-Escalation.

Additional Tactical Debrief Topic

- **Holstering Service Pistol** – Officer Smith removed his service pistol from the holster of his Sam Browne. Officer Smith placed his un-holstered service pistol on top of his truck's center console and failed to maintain his pistol in a secured manner while driving. The safe storage of a firearm is paramount to minimize the possibility of an unintentional discharge or the loss of control of a firearm. The Chief will direct this to be a topic of discussion during the Tactical Debrief.¹¹

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (LAPD, Training Bulletin, Volume XLVII Issue 4, July 2018).

¹¹ Los Angeles Police Department Manual, Volume 3, Section 610.90.

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (LAPD Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).

Sergeant Smith was notified of the NTUD, which involved an off-duty Department employee, Officer Smith, who was also Sergeant Smith's son. Sergeant Smith, upon becoming aware of the incident, advised Officer Smith to notify his division as per Department policy. Sergeant Smith's advisement resulted in Officer Smith, who had stated that he was concerned over the NTUD incident and had delayed reporting the incident, to now report the incident.

Sergeant Alferez spoke with Officer Smith who informed Sergeant Alferez of the NTUD. Sergeant Alferez instructed Officer Smith to remain calm, that notifications needed to be completed, and that he would be contacted by the Department. Sergeant Alferez notified Lieutenant Kelly regarding the NTUD incident. Sergeant Alferez obtained Officer Smith's location, home address, service pistol location, and vehicle location at the direction of Lieutenant Kelly. Sergeant Alferez provided Lieutenant Kelly with the additional details provided by Officer Smith.

Lieutenant Kelly was notified of the NTUD incident by Sergeant Alferez. He instructed Sergeant Alferez to obtain Officer Smith's current location, home address, service pistol location, and vehicle location. Lieutenant made notification to Captain Grimes.

Captain Grimes, along with personnel from FID, OIG, and LAPD Internal Affairs Group responded to LASD Santa Clarita Valley Detective Bureau. Captain Grimes provided oversight of the incident and Department response.

The actions of Captain Grimes, Lieutenant Kelly, and Sergeants Smith and Alferez, were consistent with Department supervisory training and my expectations of Department supervisors following a critical incident.

Tactical Debrief

- Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvements could be made. A Tactical Debrief is the appropriate forum for involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief will direct Officer Smith to attend a Tactical Debrief that shall include discussions pertaining to the Debriefing Topics along with the following mandatory topics:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On November 14, 2019, Officer Smith attended a GTU. All mandatory topics were covered, including Firearm Manipulations.

Unintentional Discharge

- *Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

Basic Firearm Safety Rules

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target.*

Officers are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

1. *Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
2. *Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*

Administrative Disapproval - Negligent Discharge. *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error,*

such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).

- Officer Smith – Smith and Wesson, M & P, 9-millimeter, semiautomatic, single round, which traveled north through the front right passenger door panel of Officer Smith's truck.

According to Officer Smith, he entered the driver seat of his personally owned vehicle. Officer Smith removed his loaded service duty pistol from the holster of his Sam Browne that was located on the rear passenger seat of his vehicle. He placed his un-holstered service pistol on the center console with the muzzle pointed towards the front right passenger door of his vehicle. Officer Smith drove out of the store parking lot and approached the intersection of Sierra Highway and Soledad Canyon Road. Officer Smith began to brake for the red tri-light and his service pistol began to slide from the center console. Officer Smith feared his service pistol would fall to the floorboard and quickly grasped for his service pistol with his right hand. When he grabbed the service pistol, a single round was discharged.

Officer Smith recalled, "At which time I left and went to the 7-Eleven and attempted to buy the beer before I went home, because I was heading home. And then I was at the intersection of Sierra Highway and Soledad Canyon making -- approaching the left-hand turn lane to make a southbound turn onto Sierra Highway, which -- if I back up a little bit. When I'm in an area like that, I usually keep whatever weapon I carry -- if I have both, whatever it is, I keep it up on my center console" ¹²

"I have my duty weapon up on my center console. I -- normally if I see police officers around, I try to put my weapon down, because I know if I'm out on the streets and I see some guy rolling around with a pistol right on the center console, what am I going to think?"¹³

"I'm approaching the limit line. I'm getting into the lane. And for whatever reason, I don't know if there was bumps on the ground or -- I felt like pistol might like -- was moving. So I go to grab it and just put it aside anyway. And as I go to grab it, I think I'm grabbing the handle, and I grab it and that's when the -- my duty weapon -- I ND'ed."¹⁴

¹² Smith, Page 10, Line 24 – Page 11, Line 8.

¹³ *Id.*, Page 11, Lines 15-20.

¹⁴ *Id.*, Page 11, Line 20 – Page 12, Line 2.

*"I just -- that's what I do when I see other police officers. I just set it somewhere out of sight. And as I do that, I grab it wrong or I'm just not paying enough attention and accidentally pull the trigger."*¹⁵

*"It happened so fast that I don't even think that I had -- really had the time to realize it. I just grabbed it."*¹⁶

The UOFRB Chair conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The UOFRB Chair determined that the NTUD was the result of operator error. Officer Smith did not adhere to the Department's Basic Firearm Safety Rules. Officer Smith failed to maintain control of his un-holstered service pistol as it slid on the center console of his vehicle. When he grabbed his service pistol, he placed his finger on the trigger and caused the service pistol to discharge. The UOFRB noted Officer Smith did not properly secure his service pistol in a holster, leading to the NTUD incident.

Based on the totality of the circumstances, the Chair of the UOFRB determined, and the Chief concurred that the NTUD was the result of operator error and carelessness as Officer Smith did not adhere to the Department's Basic Firearm Safety Rules. Additionally, Officer Smith did not have his service pistol properly holstered or secured, and therefore, requires a finding of Administrative Disapproval, Negligent Discharge.

Injuries

- There were no injuries as a result of this NTUD incident.

Additional/Equipment

- **Officer Smith**

Preservation of Evidence – The FID investigation determined Officer Smith failed to preserve evidence after being involved in a NTUD incident, in regard to the scene, his service pistol, and his truck. Officer Smith failed to remain at scene after he unintentionally discharged his service pistol. Instead, he drove to his residence. According to Officer Smith, while at his residence, he removed the magazine from his service pistol and counted sixteen rounds inside the magazine and one round in the chamber. Officer Smith inspected his truck and observed two bullet holes (one to the front right passenger door and the other through the front right passenger glass window). Officer Smith searched his vehicle in an attempt to locate the discharged cartridge casing, but he could not locate it. Officer Smith removed the damaged glass window, containing a bullet hole, from the front right passenger door

¹⁵ *Id.*, Page 38, Line 5-9.

¹⁶ *Id.*, Page 38, Line 15-17.

of his truck. Officer Smith later took his truck to an auto repair shop to repair the damage caused during the NTUD incident.

Protocols Subsequent to a Categorical Use of Force Incident – The FID investigation determined there was a significant delay by Officer Smith in reporting the NTUD incident. The incident occurred on October 25, 2019, at approximately 0150 hours, but was not reported until 1745 hours. In addition, Officer Smith discussed the NTUD incident with his father prior to reporting the incident to his division of assignment.¹⁷

Both of these issues of Preservation of Evidence and Protocols Subsequent to a Categorical Use of Force Incident were brought to the attention of Captain G. Hurtado, Serial No. 34865, Commanding Officer, Foothill Patrol Division, who advised that these issues were being addressed in a personnel complaint initiated by LAPD Internal Affairs Group (CF No. 19-003128). The Commanding Officer of Operations – Valley Bureau (OVV) and the Director of the Office of Operations (OO) concurred with these actions. As such, the Chief deemed no further action is necessary at this time.

- **Lieutenant Kelly**

Watch Commander's Daily Report (Documentation) – Lieutenant Kelly's Watch Commander's Daily Report, dated October 25, 2019, did not document the required information for the NTUD incident, nor did it indicate that a Categorical Use of Force had occurred.¹⁸ This issue was brought to the attention of Captain Hurtado who determined Lieutenant Kelly retired from the Department on February 1, 2020; therefore no corrective action would be necessary.¹⁹ The Commanding Officer of OVV and the Director of OO concurred with these actions. As such, I deem no further action is necessary.

- **Sergeant Alferez**

Sergeant's Daily Report (Documentation) - Foothill Patrol Division Sergeant Alferez' Sergeant's Daily Report, dated October 25, 2019 did not document the required information for this incident. This issue was brought to the attention of Captain Hurtado who determined Sergeant Alferez' Sergeant's Daily Report provided a brief entry regarding the NTUD incident in the opening line. Further analysis determined Sergeant Alferez was directed by Lieutenant Kelly to provide limited information on the NTUD incident due to a pending personnel complaint related to this incident. Based on Captain Hurtado's analysis, he determined no corrective action was necessary. The Commanding Officer of OVV and the Director

¹⁷ Los Angeles Police Department Manual, Volume 3/792.05, Employee's Responsibilities.

¹⁸ Refer to instructions on LAPD Form 15.80.00, "Watch Commander's Daily Report."

¹⁹ Lieutenant Kelly's retirement was unrelated to this incident.

of OO concurred with these actions. As such, the Chief deemed no further action to be necessary.

Audio/Video Recordings

- **Digital In-Car Video System (DICVS) / Body Worn Video (BWV)** – Officer Smith's NTUD occurred while he was off-duty; therefore, no LAPD DICVS or BWV were not deployed or activated during this incident

Surveillance Video – The 7-Eleven store was equipped with video surveillance cameras. The video from those cameras were later recovered by LASD personnel. The cameras captured Officer Smith as he entered the store, purchased items, and exit the store. Officer Smith's vehicle was also partially captured driving away from the parking lot. The video footage did not record any audio and did not capture the NTUD incident. The video footage was reviewed and was consistent with the FID investigation.

Chief's Direction

- The Chief advised the Director, Office of Support Services (OSS), to ensure that all personnel review the Department video addressing unintentional discharges of firearms, dated January 15, 2020, along with the corresponding message from the Chief of Police. The video from In-Service Training Division, Firearms Training Section, demonstrated the safe handling of firearms and reviewed the Four Basic Firearm Safety Rules to prevent unintentional discharges through the emphasis of the safe handling of firearms.

Additionally, on August 6, 2020, the Director of OSS issued a notice with regard to Non-Tactical Unintentional Discharges and Adherence to Basic Firearms Safety Rules. The notice is a reminder for all Department personnel to adhere to the basic firearms safety rules, which is of paramount importance and is our best defense against unnecessary injury.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- Does not apply.

Tactical De-escalation

- Does not apply.

Additional

- The OIG notes that the FID report references the initiation of CF No. 19-003128 in relation to Officer Smith's delay in reporting his unintentional discharge of a firearm to the Department, and that the Chief's report references the same CF No. in relation to "issues of Preservation of Evidence and Protocols Subsequent to a Categorical Use of Force Incident" involving Officer Smith.

In addition to those issues, the OIG recommends that the Department also address Officer Smith's level of alcohol intoxication while he drove his vehicle at the time of the incident; his action of leaving his firearm unsecured and unattended in the rear passenger seat of his vehicle for some amount of time (while he was in the 7-Eleven store as well as at any other time he may have done so during this incident); his operation of a motor vehicle while not in possession of a driver's license (or, potentially, a temporary replacement license, noting that he had recently lost his driver's license); as well as any other issues of potential misconduct that may become apparent from his actions leading up to, and in the aftermath of, his unintentional discharge of a firearm.

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- Does not apply.

Unintentional Discharge

- The OIG concurs with the Chief's findings.

A handwritten signature in black ink, appearing to read "M. P. Smith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark P. Smith
Inspector General